IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6105 OF 2006

Shri Bhikachand Mundada ...Petitioner
V/s.
Shri Shyam Gyaniram Agarwal ...Respondent

Shri Rajesh More for the Petitioner.
Shri B.S. Bhagat with Shri Pramod Patil for the Respondent.

AND

WRIT PETITION NO. 6104 OF 2006

Shri Mangala Nandkishor Ladda ...Petitioner
V/s.
Shri Shyam Gyaniram Agarwal ...Respondent

Shri Sanjay Kshirsagar for the Petitioner.
Shri B.S. Bhagat with Shri Pramod Patil for the Respondent.

CORAM : V.M. KANADE, J.

DATED : MARCH 8, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners.

2. The respondent in both the petitions is the original landlord who had filed two different suits against the petitioners in both these petitions seeking possession of the premises which were given on rent to the petitioners therein. During the pendency of the

suit, consent terms were filed by both the petitioners and the respondent therein and it was agreed that the landlord would provide permanent shop on ownership basis in the newly constructed building and during the intervening period, an alternative accommodation would be given to both the petitioners. Thereafter, he preferred execution application since according to him, the tenants did not handover the possession of the shop premises as agreed by them in the consent terms. Both the tenants filed their objections to the execution proceedings by filing an application under Section 47 of the Civil Procedure Code. While this application under Section 47 was still pending, another application was filed by both the petitioners seeking more or less the same relief. The executing court rejected the said application on the ground that it is not maintainable particularly when the original application under Section 47 was pending.

2. I do not see any reason to interfere with the impugned order passed by the 2nd Additional Judge, Small Causes Court, Pune.

3. The learned Counsel appearing on behalf of the petitioners submitted that it would be clarified that all the contentions raised by the tenants in their original application may be heard on merits.

4. The learned Counsel for the respondent original-landlord submits that the tenants are obviously trying to delay the execution proceedings by filing one application after another and their only intention is to delay the execution proceedings.

5. It is clarified that all contentions raised by the petitioners in their original application under Section 47 are kept open and shall be considered on merits. The Executing court is further directed to decide all applications, as expeditiously as possible and in any case, within a period of three months.

6. With these directions, both these petitions are disposed of. Interim order granted earlier is vacated.

(V.M. Kanade, J.)